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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.256 OF 2006
IN
SUIT NO.2031 OF 1992

Stanislaus Frank Rodrigues & Anr. ... Plaintiffs

V/s.

Arthur D'Souza & Ors. ... Defendants

And

Angel House Co-op. Housing Society Ltd. ... Applicant

Mr.Sanjay Jain with Mr.C.Upadhyay for Plaintiffs
Mr.P.Colabawalla with Ms.F.Behramkamdia and
Ms.Vandana Tiwari for Applicant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 26, 2006**

P.C.:

. The Chamber Summons has been taken out by the applicant for being added as a party defendant to the suit. According to the Applicant, CTS No.764 was owned by two co-owners, each having one half share. Half the share in the plot devolved upon Plaintiff Nos.1 and 2 and Defendant No.9. The other half devolved upon the son of the co-owner, who also owns Plot Nos.762 and 763. Ultimately, after changing hands several times, CTS Nos.762, 763 and 764 alongwith the building situate thereon was sold to Defendant Nos.1 and 2. Defendant Nos.1 and 2 by an agreement of 16.4.1994 have sold their right, title and interest in CTS Nos.762, 763 and 764 alongwith the buildings standing thereon to Defendant Nos.10 to 13. Defendant Nos.10 to 13 who then possessed

absolutely CTS Nos.762 763 and half of 764 built a building known as Angel House on this land. Defendant No.9 who is an heir of one of the original co-owners has sold his undivided share in plot Nos.759, 761 and 764 (part) to Defendant No.10. The Plaintiffs are claiming that they alongwith Defendant No.9 are owners of half of the undivided share in CTS No.764. According to the Applicant, after Angel House was constructed by Defendant Nos.10 to 13 on the aforesaid plot of land, flats were purchased by several persons who formed the applicant-society. The applicant-society is a registered cooperative housing society. It contends that any order passed in the suit would vitally affect the rights of their members. It is pointed out on behalf of the applicant that none of the defendants are defending the suit and therefore, it is absolutely necessary to join them as a party defendant. Moreover, CTS No.764 is not sub-divided nor is there any demarcation as to which part of the property is owned by the plaintiffs or Defendant No.9 nor is there any indication as to which part is owned by Defendant Nos.10 to 13 through whom the applicant now claims to have a right.

2. The Plaintiffs oppose this application on the ground that if at all it is held that the applicant can claim through Defendant No.9, it would be entitled to do so once it is held that the plaintiffs and Defendant No.9 are owners of half of CTS No.764. It is submitted

therefore, that there is no need to add the applicant as a party defendant to the suit.

3. In my view, this submission cannot be accepted. Any order passed in the suit would vitally affect the rights of the members of the applicant-society. The building is built over part of CTS No.764 which has not been sub-divided and hence, the applicant is a necessary and proper party.

4. Chamber Summons allowed in terms of prayer clause (a). Amendments to be carried out within two weeks from today.

5. Obviously, the amendment is without prejudice to the interim orders which have already been passed.

vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2947 OF 2003
IN
SUIT NO.2031 OF 1992

Stanislaus Frank Rodrigues & Anr. ... Plaintiffs

V/s.

Arthur D'Souza & Ors. ... Defendants

And

Angel House Co-op. Housing Society Ltd. ... Applicant

Mr.Sanjay Jain with Mr.C.Upadhyay for Plaintiffs
Mr.P.Colabawalla with Ms.F.Behramkamdia and
Ms.Vandana Tiwari for Applicant

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P.C.:

. S.O. for four weeks.